

## GENERAL PROVISIONS

### 4-1. Implementation.

4-101. Except as provided in section 4-105 of this section, this Order shall supersede Executive Order 12036, "United States Intelligence Activities," dated January 24, 1978, and sections 1-104 and 1-105 of Executive Order 12139, "Foreign Intelligence Electronic Surveillance," dated May 23, 1979.

4-102. The NSC, the Secretary of Defense, the Attorney General and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order.

4-103. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order.

4-104. The Attorney General shall have sole authority to issue and revise procedures required by section 2-201 for the activities of the FBI relating to foreign intelligence and counterintelligence. The Attorney General shall also develop procedures for coordination by the Drug Enforcement Administration (DEA) with the Director of Central Intelligence to ensure that the criminal narcotics intelligence activities of DEA are consistent with foreign intelligence programs. Procedures shall also be developed for coordination by DEA of its production and dissemination of intelligence on the foreign and domestic aspects of narcotics production and trafficking with other agencies with responsibilities in these areas. Liaison with intelligence and internal security services of foreign governments will be conducted in accordance with procedures established by the Director of Central Intelligence.

4-105. Until the procedures required by this Order have been established, the activities authorized and regulated herein shall be conducted in accordance with procedures heretofore approved or agreed to by the Attorney General pursuant to Executive Order 12036. Procedures required by this Order shall be established as expeditiously as possible.

4-106. In some instances, the documents that implement this Order will be classified because of the sensitivity of the information and its relation to national security. All instructions contained in classified documents will be consistent with this Order. All procedures promulgated pursuant to this Order

4-107. Unless otherwise specified, the provisions of this Order shall apply to activities both within and outside the United States, and all references to law are applicable laws of the United States, including the Constitution and this Order. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

#### 4-2. Definitions.

For the purposes of this Order, the following terms shall have these meanings:

4-201. Communications security means protection measures taken to deny unauthorized persons information derived from telecommunications of the United States Government related to national security and to ensure the authenticity of such communications. Such protection results from the application of security measures (including cryptosecurity, transmission security, emissions security) to electrical systems generating, handling, processing, or using national security or national-security related information. It also includes the application of physical security measures to communications security information or materials.

4-202. Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document, or communications security programs.

4-203. Electronic Surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction finding equipment solely to determine the location of a transmitter.

4-204. Employee means a person employed by, assigned to, or acting for an agency within the Intelligence Community.

4-205. Foreign Intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

4-207. Intelligence Community and agencies within the Intelligence Community refer to the following agencies or organizations:

- (a) Central Intelligence Agency (CIA);
- (b) The National Security Agency (NSA);
- (c) The Defense Intelligence Agency;
- (d) The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (e) The Bureau of Intelligence and Research of the Department of State;
- (f) The intelligence elements of the military services, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and
- (g) The staff elements of the Director of Central Intelligence.

4-208. Intelligence product means the estimates, memoranda and other reports produced from the analysis of available information.

4-209. International terrorist activities means any activity or activities which:

- (a) involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts; and
- (b) "appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and
- (c) occurs totally outside the United States or transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or

4-210. The National Foreign Intelligence Program includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President.

- (a) The programs of the CIA;
- (b) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;
- (c) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;
- (d) Activities of the staff elements of the Director of Central Intelligence.
- (e) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

4-211. Physical surveillance means an unconsented, systematic and deliberate observation of a person by any means on a continuing basis, or unconsented acquisition of a nonpublic communication by a person not a party thereto or visibly present threat through any means not involving electronic surveillance. This definition does not include overhead reconnaissance not directed at specific United States persons.

4-212. Special activities means activities conducted in support of national foreign policy objectives abroad which are designed to further official United States programs and policies abroad, are not intended to influence U.S. public opinion or policies, and which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but not including diplomatic activity or the collection and production of intelligence or related support functions.

4-213. Telecommunications means the transmission, communication or processing of information, including the preparation of information therefor, by electrical, electromagnetic, electro-mechanical or electro-optical means.

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4-214. United States, when used to describe a place,  
includes the territories of the United States.

4-215. United States person means:

(a) For purposes of collection of information by any technique for which a warrant would be required if undertaken for law enforcement purposes, and the dissemination and retention of such information, a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association organized in the United States or substantially composed of United States citizens or aliens admitted for permanent residence, or a corporation incorporated in the United States, except a corporation openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments; or

(b) For all other purposes, a United States citizen, an alien physically present in the United States who is known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens, or a corporation incorporated in the United States, unless such corporation is controlled by one or more foreign powers, persons or organizations.